



POLICE DEPARTMENT

June 16, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Victoria Dewitt
Tax Registry No. 948879
78 Precinct
Disciplinary Case No. 2012-8517

The above-named member of the Department appeared before me on November 14 and December 19, 2013, charged with the following:

1. Said Police Officer Victoria Dewitt, assigned to the 78th Precinct, on or about September 20, 2012, while on-duty and in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Dewitt appeared at the Kings County District Attorney's Office regarding an assigned arrest and refused a paralegal's request to contact a sergeant to determine the circumstances of the arrest, resulting in the District Attorney's Office's declination to prosecute.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Roberto Vlacci and Sergeant Mark Slawik as witnesses.

Roberto Vlacci

Vlacci is a paralegal in the Brooklyn District Attorney's Office (DA's Office). He has worked at the DA's Office since 1984, and he is responsible for interviewing witnesses and drafting complaints. On September 20, 2012, he met with Respondent at the DA's Office because a Desk Appearance Ticket (DAT) packet that she had submitted was incomplete. The DAT was for the arrest of a person who was caught driving with a suspended license. Respondent, who had been assigned the arrest, was not present to observe the offense take place. The problem with the DAT packet was that she, and not the observing officer, signed the supporting deposition. Department's Exhibit (DX) 1 is the supporting deposition, signed by Respondent on August 10, 2012. Respondent noted on the deposition that she was informed of the offense by Sergeant Anthony Mahepath.

At their September 2012 meeting, Respondent told Vlacci that she did not recall the facts of the case since she had not been present to observe the offense. Vlacci asked Respondent to call Mahepath, and Respondent replied that she was unable to call Mahepath because she had Equal Employment Opportunity (EEO) issues with him. Vlacci then brought the arrest paperwork to his supervisor, who decided to decline

prosecution of the case. This determination was based on the inability to “convert the complaint based on the supporting deposition.” According to Vlacci, the complaint would have been drafted and prosecution would have proceeded had Respondent called Mahepath and gotten information from him. DX 2 is a declined prosecution form, prepared by Vlacci. Vlacci noted on the form the reason for declining prosecution:

There is insufficient evidence to draft a legally sufficient accusatory instrument because the supporting deposition was not signed by the observing sergeant, the supporting deposition contained double hearsay, [arresting officer] (A/O) was not present during the occurrence, A/O was given the arrest. When A/O was notified to appear to draft case in person, A/O had no recollection regarding case, A/O did not speak with observing sergeant, and A/O was not able to speak with sergeant to discuss the case to draft the complaint because A/O has EEO issues against sergeant and will not talk with sergeant. Therefore case is declined.

On cross-examination, Vlacci testified that he has been drafting criminal court complaints since 2003. He conceded that the paperwork problem could have been solved in this case had a supporting deposition been mailed or faxed to Mahepath for his signature. That would have allowed Respondent to draft the complaint as an “informed-by complaint.” Vlacci had access to a telephone and fax machine, and has reached out to members of the service about complaints before. He did not do so in this case, explaining, “Since we notify the officer to come on a DAT, the assumption was that, once the notification goes through, the officer made all the prerequisite steps, so therefore, the officer would be able to sign the complaint.” Vlacci did not know what kind of instruction Respondent received in her notification to report to the DA’s Office.

Upon questioning by the Court, Vlacci testified that he did not recall his reasoning for not personally reaching out to Mahepath, though non-DAT cases took priority over DAT cases.

On recross-examination, he agreed that the only thing wrong with the DAT packet was that Mahepath did not sign the supporting deposition.

Sergeant Mark Slawik

Slawik, who has been assigned to the Internal Affairs Bureau since September 2012, investigated the allegation involving Respondent's refusal to call Mahepath. He explained that after the DA's Office declined prosecution, it notified the 78 Precinct's Integrity Control Officer of Respondent reporting to have EEO issues with Mahepath. The Integrity Control Officer called the EEO office and found no record of an EEO complaint against Mahepath. This was how the case came to Slawik's attention.

In an October 16, 2012 official Department interview, Respondent stated that when Vlacci told her to call Mahepath, she explained to Vlacci, "I ha[ve] a really bad relationship with the sergeant and every time I talk to him it's a big confrontation and I have like serious OEEO type issues going on with him." Vlacci informed Respondent that the DA's Office would decline prosecution if she did not call Respondent, and Respondent asked Vlacci to contact Mahepath himself.

When asked in the interview what type of EEO issues she had with Mahepath, Respondent replied that she never actually filed a complaint against Mahepath, but that Mahepath threatened to give her bad evaluations for bad activity and also announced at a commanding officer's meeting that she called the desk and hung up on him. DX 3 and 3A are the interview audio recording and transcript.

According to Slawik, Respondent was obligated to call Mahepath when Vlacci asked her to. Slawik explained, "She stated [to Vlacci that] she doesn't remember

anything, she has no recollection of the whole incident and stated that she wasn't at the scene. In that case she had to call Sergeant Mahepath when she was asked because otherwise how was the case going to proceed?"

On cross-examination, Slawik agreed that it is preferable for arrest paperwork to be prepared by the member of the service who observed the criminality. Slawik did not know if Vlacci ever attempted to call Mahepath.

Respondent's Case

Respondent called Sergeant Anthony Mahepath as a witness and testified in her own behalf.

Sergeant Anthony Mahepath

Mahepath, an 11-and-a-half-year member of the Department, is currently assigned to the 78 Precinct. While working as patrol supervisor on August 10, 2012, he and his driver, Police Officer Misir, pulled over a Person A for having a tinted windshield that was too dark. A computer check revealed that Person A had been driving with a suspended license.

Mahepath summoned Respondent to the scene and assigned her Person A's arrest. Respondent neither observed the car stop nor had any personal knowledge of the facts leading to the arrest. When asked why he assigned the arrest to Respondent instead of just having Misir take the arrest, Mahepath testified, "Because Officer Dewitt was in my squad and it . . . was brought to my attention and also in observing her . . . she wasn't good with paperwork." According to Mahepath, Respondent also had problems with

arrests. Mahepath had been at the command for five or six months at that point, but he never entered Respondent in the minor violations log for problems with paperwork. Nor had Respondent ever received a command discipline for problems with paperwork or arrests.

Mahepath gave Respondent all the information that the DA's Office would need to draft the complaint against Person A. While Respondent was at the DA's Office, nobody ever tried to contact him.

On cross-examination, Mahepath testified that it is very common for sergeants to assign arrests to police officers. He assigned Person A's arrest to Respondent as a learning experience for her. He wanted her to become more comfortable doing arrest paperwork. Up to that point, Respondent had been an inactive police officer in terms of her arrest frequency.

According to Respondent's Activity Log, she took her meal break at 11:02 a.m. and did not respond to Person A's arrest until after her meal ended at 12:02 p.m. But even if Respondent had still been on meal, Mahepath would have been able to assign the arrest to her.

Mahepath explained that he never entered Respondent in the minor violations log because he was new to the command and he "wasn't going to go outright and just start writing up paperwork to hurt this person's career. . . . It was to see if we could work on it first and then go forward." This was the same reason he did not issue her a command discipline.

On redirect examination, Mahepath testified that he went back to the station house after Person A's arrest to review the paperwork that Respondent was preparing.

Mahepath signed off on the paperwork. Everything in the paperwork was based on what Mahepath told Respondent. Mahepath signed a supporting deposition for the DAT packet, but he did not know what happened to it.

Respondent

Respondent was appointed to the Department in July 2010 and is currently assigned to the 78 Precinct. As of August 2012, Mahepath had been her direct supervisor for a month or two. The first week that Mahepath supervised Respondent, he pulled her into a room and threatened that if she did not "produce enough activity," he would make sure that she got entered in the minor violations log. After Respondent spoke with her union delegate about Mahepath's threat, Mahepath no longer wanted to deal with her while on patrol. For this reason, he would assign her to tasks such as guarding hospitalized prisoners and prisoner transports. This made it harder for her to reach the level of activity that Mahepath wanted.

Respondent was on patrol on August 10, 2012, and at 11:02 a.m. she took her meal at the station house. While upstairs in the station house, another officer informed her that Mahepath wanted to see her at the desk. At the desk, Mahepath assigned her Person A's arrest. Mahepath informed her of the location and reason for the car stop. Misir told her the arrest time, and he gave her Person A's license, registration, and car insurance documentation. Respondent was responsible for preparing the arrest paperwork and for fingerprinting and photographing Person A. This process took a couple of hours, and Mahepath signed the criminal summons that went in the DAT packet. Respondent had no further contact with Mahepath about the arrest.

On September 20, 2012, a Sergeant Smith notified Respondent to report to "DAT court." Smith also told her that "Mahepath was at the desk making a scene and that [she] better watch out because he [was] out to get [her]." Respondent took this warning to mean that Mahepath was very agitated with her. Respondent called the roll call office to ask what case she was being called to court for. The roll call office did not have an answer to her question, but she was told that she "didn't need to go down with any paperwork, [she] could just show up and everything would be fine."

At the DA's Office, Vlacci asked Respondent questions about verbal exchanges that occurred during Person A's car stop. Because Respondent was not present at the stop, she was unable to answer these questions. When Vlacci asked her to call Mahepath, Respondent replied by asking Vlacci if he could contact Mahepath himself. When Vlacci told her that she would have to be the one to make the call, Respondent replied that she was not on good terms with Mahepath. When Vlacci asked for specifics about her relationship with Mahepath, Respondent replied, "It's really bad. Every time I'm near him, it's a confrontation, and I had [E]EO-type issues with him." Vlacci left the room to speak with his supervisor. When he returned a couple of minutes later, he informed Respondent that they were going to decline prosecution and she was free to leave. Respondent testified that she never refused to call Mahepath that day; she simply asked Vlacci to make the call himself since her relationship with Mahepath was strained. Mahepath was at work at the time.

On cross-examination, Respondent testified that she has never filed an EEO complaint against Mahepath. When asked about specific issues that she had with Mahepath, Respondent gave the example of Mahepath not giving her time off to attend a

funeral. Respondent conceded that it is not necessarily an EEO issue when an officer does not like a supervisor or does not like an order issued by a supervisor.

Respondent explained that when Vlacci asked her to call Mahepath, she thought of it as Vlacci asking her for a favor. It was not like an order that a police officer gets from a sergeant. Respondent agreed that the call to Mahepath was for the purpose of assisting in the prosecution of Person A's case. Because Mahepath personally observed the incident, the DA's Office needed to obtain information from him in order to proceed with prosecution. Respondent disagreed that she let her personal feelings toward Mahepath affect the prosecution of the case. [In her October 2012 official Department interview, however, Respondent responded affirmatively when asked if she allowed the "personal issues that [she] ha[d] with the sergeant . . . to affect the prosecution of an arrest." The transcript of that interview section was entered into evidence as Court Exhibit 1.]

After being confronted by her statements at her Department interview, Respondent admitted that Vlacci told her that if she didn't call her sergeant the office would decline prosecution. In her statement she acknowledged, Vlacci "told me to, uh, to hang at to, like, hang tight and he's going to DP it if I don't call him. So he's like, let me just check with my boss." When he returned he told her, "I'm just going to DP the case."

On redirect examination, Respondent confirmed that she never affirmatively refused to contact Mahepath. When Vlacci informed her that the DA's Office was declining prosecution, he did not give her another opportunity to call the sergeant. He simply dismissed her. Respondent never filed an EEO complaint against Mahepath

because she was aware of how making such an allegation could affect her career and she did not want to “jump the gun.”

On re-cross examination, when asked if she allowed Person A’s case to be declined prosecution, Respondent testified, “I have no control over what the A[ssistant] D[istrict] A[ttorney] decides to do. I asked the paralegal to contact him. Beyond that, I didn’t have control.” She agreed that it was her duty to cooperate with the DA’s Office, and on redirect examination she testified that that is what she did.

FINDINGS AND ANALYSIS

Specification No. 1 alleges that Respondent, while on-duty appeared at the Kings County District Attorney’s Office on September 20, 2012 for an assigned arrest and refused a paralegal’s request to contact a sergeant about the circumstances of the arrest, resulting in the District Attorney’s Office’s declination to prosecute.

Roberto Vlacci, a paralegal in the District Attorney’s office, testified that on September 20, 2012, he met with Respondent in the DA’s Office because a Desk Appearance Ticket (DAT) packet that she had submitted was incomplete. The DAT was for a person arrested for driving with a suspended license.

The supporting deposition in the DAT that Respondent had signed on August 10, 2012 stated that she had been informed by Sergeant Mahepath of the facts. However, the form contained no information about how the stop occurred.

Respondent could not tell Vlacci what happened because she did not observe the offense, Sergeant Anthony Mahepath had. To convert the supporting deposition into a

complaint, the District Attorney's office needed either an affidavit from Mahepath describing what he observed or Respondent's description in a supporting deposition of what Mahepath told her he saw.

Vlacci asked Respondent to contact the sergeant so that she could fill in the missing information on the form. Respondent told Vlacci that she would rather not contact the sergeant because she had an Equal Employment Opportunity issue with him. The District Attorney's office then declined prosecution of the case.

Respondent argued that her sergeant should not have assigned Respondent on that arrest, did not fill out the forms correctly, and set Respondent up to fail. But whether the sergeant made any mistakes is not the issue before this tribunal. The issue is whether, when Respondent was at the District Attorney's office, she refused to contact her sergeant and whether her refusal caused the complaint to be dismissed.

The Department Advocate argued that Respondent did not have to literally say to the paralegal that she was refusing to call her sergeant for her behavior to be considered a refusal. The Advocate argued that two elements constituted a refusal. First, Respondent asked the paralegal to call the sergeant for her, when this was not the paralegal's job. Second, she never called the sergeant even after she learned the case would be dismissed.

The argument that asking the paralegal to call the sergeant constituted a refusal is not persuasive. Respondent maintained that she only asked the paralegal if he could call the sergeant for her as a favor. In fact, no evidence was presented that Respondent refused to make the call.

However, Respondent did fail to comply with a request from the district attorney's office. Even if Respondent had an EEO issue with her sergeant,¹ she was still obligated to contact him herself. She could not avoid making this call because she felt uncomfortable talking with him. Expressing reluctance to call her supervisor was unprofessional and gave the DA the excuse to dismiss the case.

During her official Department interview, Respondent said she explained to Vlacci that she didn't want to call her sergeant because she "had a really bad relationship" him, that "every time" she talked to him "it's a big confrontation" and that she had "serious OEEEO type issues going on with him." Respondent then admitted, "[A]nd he told me to, uh, to like hang tight and he's going to DP it if I don't call him so he's like let me just go check with my boss." Then Vlacci left. Thus Respondent knew even before Vlacci came back to tell her "I'm just going to DP the case," that the case would not go forward because she had not called the sergeant.

Respondent testified that, when the paralegal came back from speaking with his supervisor and told her to leave, she believed she had no choice but to leave. Yet she knew why the case had been dismissed. She now possibly had a final chance to rectify her mistake by calling the sergeant. Instead, she just left. Her failure to make any effort to contact her supervisor resulted in the dismissal of the case.

Therefore, Respondent is found Guilty of Specification No. 1.

¹ Despite references to an EEO issue with Mahepeth, Respondent never articulated an EEO issue. Respondent also never filed an EEO complaint.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 6, 2010. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate recommended a 20 vacation day penalty. This recommendation is excessive.

In recent cases where a police officer failed to prepare or appear at Traffic Violations Bureau resulting in the dismissal of between two and eight summonses, the penalty ranged between five and ten vacation days. *Case No. 7312/12*, (December 10, 2012), *Case No. 5159/11*, (June 27, 2012), *Case No. 5096/11*, (August 29, 2012), *Case No. 7279/12*, (November 13, 2012), *Case No. 8017/12*, (April 1, 2013), *Case No. 5300/11*, (June 28, 2013), *Case No. 9686/13*, (December 26, 2013). Here, Respondent's lack of cooperation with the District Attorney's office caused the dismissal of a case involving driving with a suspended license. While this criminal matter is more serious than a traffic court violation, it warrants a lesser penalty than the Advocate's recommendation.

Other considerations warrant a lesser penalty. The Advocate did not present any evidence of an outright refusal by Respondent to call her superior. Also, if the DA's office really wanted to proceed with the case, it had other means to do so. Someone from the office could have contacted Mahepath to obtain an affidavit from him or could have

ordered Respondent to call the sergeant. The evidence indicated that the DA just did not want to spend more time preparing because DAT cases were less of a priority.

Therefore, it is recommended that Respondent forfeit 10 vacation days.

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner – Trials

APPROVED

NOV 06 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VICTORIA DEWITT
TAX REGISTRY NO. 948879
DISCIPLINARY CASE NO. 2012-8517

In 2013, Respondent received a rating of 3.5 “Highly Competent/Competent” on her annual performance evaluation. In 2012 and 2011, she received ratings of 3.0 “Competent.” [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials